

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING MAP AMENDMENT REPORT FZC-10-05
NOONAN ET AL
SEPTEMBER 07, 2011

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Noonan et al for a zoning map amendment in the Highway 93 North Zoning District. The proposed amendment would change the zoning on 78.71 acres from SAG-10 Suburban Agriculture to B-2HG General Business Highway Greenbelt.

The Flathead County Planning Board will conduct a public hearing on the proposed map amendment on September 21, 2011 in the 2nd Floor Conference Room, 1035 1st Ave West, Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will also hold a public hearing on the proposed amendment at a date and time yet to be determined. Documents pertaining to the map amendment are available for public inspection in the Flathead County Planning and Zoning Office, Earl Bennett Building, 1035 First Avenue West, in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the map amendment will also be available for public inspection in the Flathead County Clerk and Records Office, 800 South Main Street, in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed amendment is not within the jurisdiction of any local land use advisory committee or local land use council.

B. Planning Board

On September 08, 2010 the Flathead County Planning Board held a public hearing on a text amendment application that originally accompanied this map amendment request. Consideration of the text amendment was postponed to October 13, 2010. After consideration of that file was postponed, the applicant's technical representative requested that consideration of FZC-10-05 (this application) be postponed to the same date. That date was used to schedule a workshop for the text amendment, and the zoning map amendment (this file) was never considered again by the Planning Board.

Ultimately, the text amendment application to create a new B-2HG zoning classification was approved by the Commissioners on July 27, 2011 (Resolution #955HL). On August 07, 2011 the applicants that had originally submitted both the text and map amendment applications together requested in writing that the map amendment application be processed and a public hearing be held. The zoning map amendment was scheduled for a public hearing on September 21, 2011 and all agency referrals, adjacent property owners, and legal notices were re-sent.

C. Commission

The Flathead County Commissioners will hold a public hearing on the proposed map amendment on a date to be determined. This space is reserved for a summary of the Commission's discussion and decision.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

Noonan et al
PO Box 10171
Kalispell, MT 59904

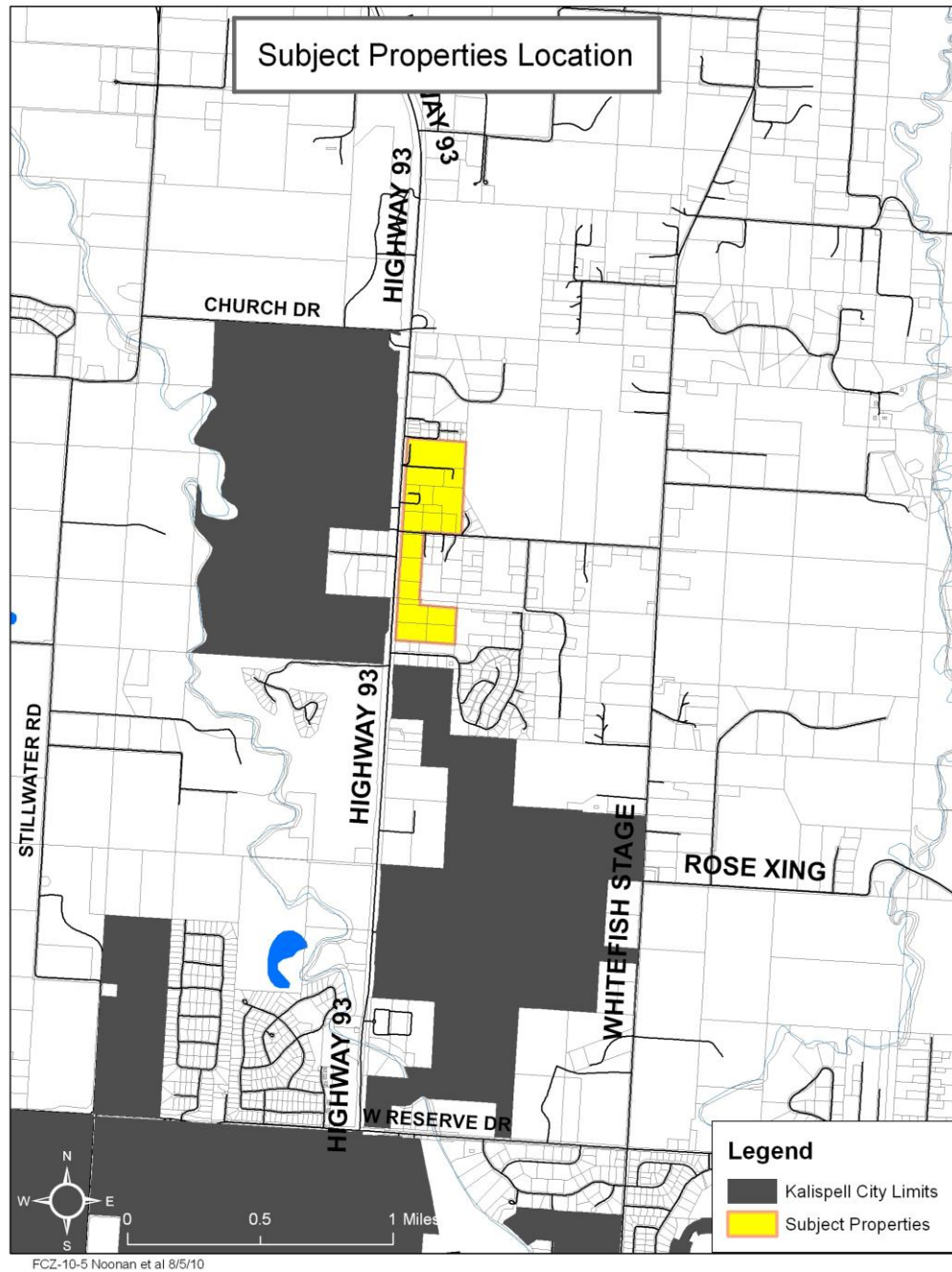
ii. Technical Assistance

Sands Surveying Inc.
2 Village Loop
Kalispell, MT 59901

B. Subject Property Location and Legal Description

The subject properties are located north of Kalispell on the east side of Highway 93 south of the interchange with Church Drive. The properties can legally be described as Tracts 1EA, 1FA, 1F, 1GA, and 1G in Section 18 and Tracts 4CA, 4CB, 4CBA, 4CDC, 4CD, 4CC, 4CDA, 4C, 4BB, 4B, 4BA, 1B, 1D and 1GA in Section 19 of Township 29 North, Range 21W, P.M.M. Flathead County, Montana.

Figure 1: Location of the subject properties.



C. Proposed Zoning Map Amendment

The proposed map amendment would change the zoning on 20 tracts covering 78.71 acres from SAG-10 Suburban Agricultural to B-2HG General Business Highway Greenbelt.

Figure 2: Existing zoning on the subject properties.

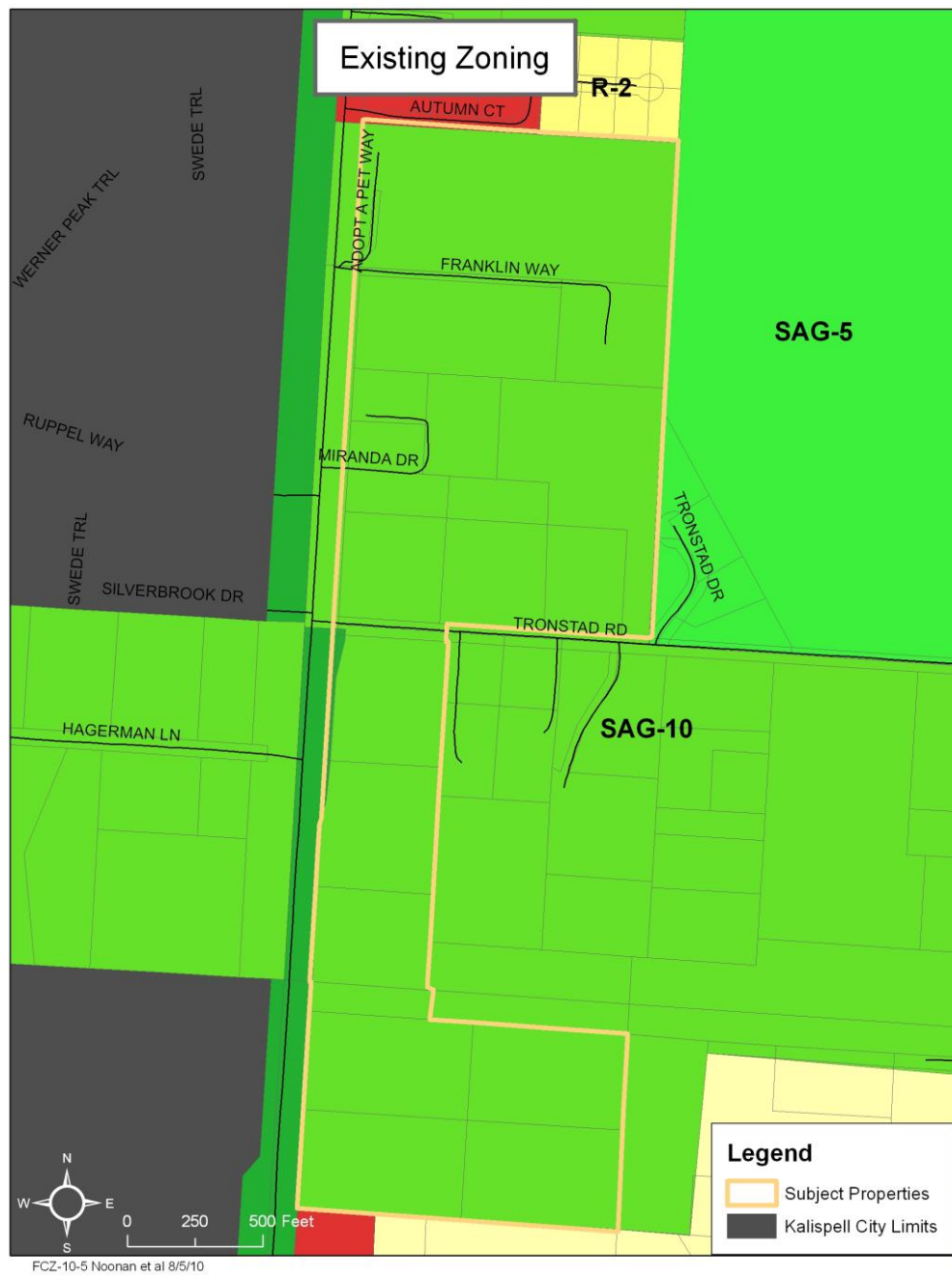


Figure 3: Proposed zoning on the subject properties.



D. General Character of and Reason for Amendment

The Highway 93 Zoning District was adopted in 1991. The zoning designations implemented at that time were based upon guidance in the 1987 Master Plan. In 2007, the Growth Policy was adopted and replaced the 1987 Master Plan, but the Growth Policy did not include specific guidance for future land uses in the Highway 93 North Zoning District. Changes in zoning, according to 76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations must be made in accordance with the Growth Policy and any applicable land use plans. Since the adoption of the Growth Policy, a number of landowners on Highway 93 have approached the Planning and Zoning Office about changing their zoning from SAG and AG

designations to B-2. Staff has explained to the landowners there is not specific guidance for zone changes in their area, and given the differences between SAG and AG designations and B-2, there is a level of uncertainty for proposed changes to B-2.

In the spring of 2010, a group of land owners on Highway 93 and their technical assistant approached the Planning and Zoning Office with an idea to request a rezoning of the subject property to B-2 General Business. After discussions with the planning staff about the attributes of the B-2 General Business zone and the Growth Policy's guidance towards more impact-mitigated commercial zoning, the group of landowners put forth the concept of a new, impact-mitigated commercial zone to be added to the Flathead County Zoning Regulations and applied in their area. The landowners and their technical assistant took the concepts discussed and created a rough draft of the B-2HG district.

The general concept was to allow many of the same uses in B-2 but with more of the uses as conditional or administrative conditional uses, and having specific provisions to mitigate impacts to the corridor and adjacent SAG and AG property owners. Special attention was given to increased setbacks, landscaping, signage requirements, a tiered building height encouraging taller buildings further from the roadway, and additional lighting standards to minimize light intruding onto neighbors or the roadway. Following a few suggestions by staff, the landowners submitted a text amendment application to add the B-2HG zone to the Flathead County Zoning Regulations, as well as this proposal for a zoning map amendment on the subject properties from SAG-10 to the proposed B-2HG.

E. Adjacent Zoning and Character of the Overall Zoning District

The area in the immediate vicinity of the subject properties has been transitioning from large lot residential and agricultural uses to urban uses. The City of Kalispell has annexed properties in the area, some of which have been developed to urban standards while others remain vacant. The properties in the immediate area that have been annexed have been zoned residential by the city, but through the PUD process, commercial opportunities do exist. Immediately to the north of the subject properties within the county there are B-1 and R-2 designations. To the south there are B-1 and R-1 designations. To the east is SAG-5 and to the west is SAG-10. Uses in the area range from urban residential uses, rural residential uses, commercial uses, and agricultural uses.

F. Public Services and Facilities

Sewer:	Individual septic system(s)
Water:	Individual well(s)
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy (if available)
Telephone:	CenturyTel
Schools:	Kalispell and Flathead
Fire:	West Valley Rural Fire District
Police:	Flathead County Sheriff's Office

The City of Kalispell sewer and water line is available adjacent to the subject properties but to connect to the systems, the properties would likely have to be annexed in the city. New development in close proximity to a city sewer and water system can be required to hook into the system if cost is not prohibitive.

G. Criteria Used for Evaluation of Proposed Amendment

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification and legal notice to the applicants were mailed on August 26, 2011. Legal notice of the Planning Board public hearing on this application was published in the September 04, 2011 edition of the Daily Interlake. Following the Planning Board hearing on September 21, 2011, public notice of the Commissioner's public hearing on this zoning map amendment will be physically posted according to statutory requirements found in Section 76-2-205 M.C.A. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the date, time and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Agency referrals were originally mailed on August 18, 2010. Agency referrals were not mailed again prior to the September 21, 2011 Planning Board hearing because the nature of the application had not changed and comments from approximately one year earlier would presumably be the same.

Specifically included in the original agency referral mailing was the West Valley Fire Department, Kalispell Elementary School District, Flathead School District, because the subject properties are located in those districts. Also included was the City of Kalispell because of the proximity to the city limits. Below is a list of agencies contacted:

- Mike Meehan, Flathead County Sheriff
- Jim Chilton, Flathead County Solid Waste
- Dave Prunty, Flathead County Public Works
- Glen Gray, Flathead City-County Health Department
- Joe Russell, Flathead City-County Health Department
- Marcia Sheffels, Superintendent of Schools
- MT Fish, Wildlife, & Parks
- Jed Fisher, Flathead County Weeds & Parks Department
- James Freyholtz, MDT
- Larry Van Rinsum, Flathead Conservation District
- Mike Wyrwas, USPS Billings
- Jamie Murray, BPA

- Fred Holmes, DNRC
- Dan Walls, MDT
- Marc Pitman, DNRC
- West Valley Fire District
- Kalispell Elementary School District
- Flathead High School District
- Kalispell Planning Department

III. COMMENTS RECEIVED

A. Public Comments

As was noted above, adjacent landowner notification was originally mailed on August 16, 2010 and was sent again on August 26, 2011. Legal notice of the public hearing appeared in the September 04, 2011 Daily Interlake. As of September 06, 2011, the date revisions to the original staff report were completed, public comment has been received regarding the requested zoning map amendment from 3 people. Each of these 3 written comments were included in the packets mailed to the Planning Board on September 07, 2011 for their consideration prior to the September 21, 2011 public hearing.

Any public comment received after September 06, 2011 at 5:00 pm will be summarized verbally into the record at the public hearing held by the Flathead County Planning Board

Any member of the public interested in the proposed zoning map amendment or adjacent landowners who received direct notification may attend the September 21, 2011 public hearing and submit their comments directly to the board.

B. Agency Comments

Requests for agency comments were originally sent on August 18, 2010. Since the nature of the application did not change between the original mailing and the rescheduled public hearing, agency referrals were not sent again in August of 2011. As of September 06, 2011, the date revisions to this staff report for the Flathead County Planning Board were completed, agency comments have been received from 5 agencies. These comments are summarized below. Additionally, each of these 5 agency comments were included in the packets mailed to the Planning Board on September 07, 2011 for their consideration prior to the September 21, 2011 public hearing. Any additional agency comments received after September 06, 2011 at 5:00 pm will be summarized verbally into the record at the public hearing held by the Flathead County Planning Board.

- City of Kalispell Planning Department
 - The City of Kalispell Planning Department would recommend the proposed zone change be denied because of the following issues:
 - The proposal does not comply with the Kalispell Growth Policy

- The proposal is in line with city's future growth, abuts the city water and sewer lines, and if the properties were rezoned to a commercial and then hooked into the sewer and water lines they would not be in compliance with the city's land use map
- Rezoning to commercial would legitimize commercial strip zoning along the Highway 93 corridor.
- Potential for spot zoning when not based upon a growth policy
(Staff's Note: Spot zoning is considered special legislation that benefits specific landowners at the expense of the general public. Spot zoning is determined by the court system through a 3 part test established in the case of *Little v. Board of County Commissioners*. Below is a brief review of the three-part test in relation to this application:

1. The zoning allows a use that differs significantly from the prevailing use in the area.

There is B-1 zoning to the north and south of the subject properties. There is commercial zoning at the intersection of Church Drive and Highway 93 (not yet developed). The predominate zoning in the area is residential or suburban agricultural.

2. The zoning applies to a small area or benefits a small number of separate landowners.

The proposed zone change is 78.7 acres, affecting 20 parcels and 14 ownership groups.

3. The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.

The B-2HG is significantly different than some of the adjacent zoning designations; however, there are commercial zoning designations and existing uses in the immediate area. The issue raised by the City of Kalispell is that a zone change made without a plan is special legislation.

- Glacier Town Center which is ½ mile away is intended to serve the Kalispell area for 15-20 years.
- Access issues onto Highway 93
- The City of Kalispell Planning Department has applied the following requirements that have been placed on developments on the 93 corridor and request they be considered by the Planning Board and Commissioners:
 - Landscaping greenbelt varying from 100 to 250 feet
 - Earth berms

- Construction of bike/pedestrian paths
 - Restrictions on signs
 - Limiting building height
 - 4-side architecture in building design
 - Requiring frontage roads
- Flathead County Road and Bridge
 - No comment
- Montana Fish, Wildlife and Parks.
 - No Comment
- Darlene schottle, Kalispell Public Schools
 - No impact on schools likely, but would like to encourage this and all plans to provide access for bus routes.
- Flathead County Solid Waste District
 - Simply noting that contract haul should be utilized from this and any other areas.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area, landowners have certain land uses that are allowed “by-right.” A build-out analysis is performed to examine the maximum potential impacts of full build-out of those “by-right” uses. It is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not “best-case” or “worst case” scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zone change to the future of the community to allow for the best possible review.

There are significant differences between a SAG-10 zoning district and the B-2HG zoning district. SAG-10 provides for primarily large track residential and agricultural functions. A 10 acre minimum lot size is mandatory. The intensity of use in the district is fairly low with primarily residential uses and some agricultural uses. Commercial use is limited. All legally non-conforming commercial uses in a SAG-10 must undergo a site specific review through the conditional use permit process in order to expand. B-2HG is an intensive commercial zone. Lot size can be as dense as 7,500 square feet when public water and sewer are available. Some uses are permitted without site review, and some require a conditional use permit. Uses include restaurants, retail, offices, taverns, convention centers and supermarkets. Commercial uses are usually accompanied by

signage, outdoor lighting, and parking lots. While one 10 acre tract in SAG-10 with a single family home might only generate 10 trips per day, one 10 acre tract in B-2HG with a supermarket might generate hundreds of trips per day.

Current Zoning

SAG-10 Suburban Agricultural zoning is defined as a use district “*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development. an agricultural environment, including but not limited to residential development*” (Section 3.07.010 FCZR).

The following uses are permitted in an SAG-10 zone:

1. Agricultural/horticultural/silvicultural uses.
2. Cellular towers.
3. Class A and Class B manufactured homes (See Chapter VII – Definitions).
4. Cluster housing (See Chapter V – Performance Standards).
5. Dairy products processing, bottling, and distribution.
6. Day care homes.
7. Dwellings, single-family.
8. Guest houses.
9. Home occupations (See Chapter V – Performance Standards and Chapter VII – Definitions).
10. Homeowners parks and beaches.
11. Nurseries, landscaping materials.
12. Parks and publicly owned recreational facilities.
13. Produce stands.
14. Public transportation shelter stations.
15. Public utility service installations.
16. Ranch employee housing.
17. Stables, riding academies, rodeo arenas.

The following uses are listed as conditional uses in an SAG-10 zone; an asterisk designates conditional uses that may be reviewed administratively:

1. Airfields.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.*
3. Animal hospitals, veterinary clinics.
4. Bed and breakfast establishments.
5. Camps and retreat centers (See Chapter IV – Conditional Use Standards and Chapter VII – Definitions).
6. Caretaker’s facility.*
7. Cemeteries, mausoleums, columbariums, crematoriums.
8. Churches and other places of worship.
9. Community center buildings operated by a non-profit agency.

10. Community residential facilities.**
11. Contractor's storage yards (See Chapter IV – Conditional Use Standards).*
12. Dwellings, family hardship.*
13. Electrical distribution stations.
14. Extractive industries.
15. Golf courses.
16. Golf driving ranges.
17. Kennels, commercial (See Chapter IV – Conditional Use Standards).*
18. Manufactured home parks.
19. Recreational facilities, low-impact.
20. Schools, primary and secondary.
21. Temporary buildings or structures.*
22. Water and sewage treatment plants.
23. Water storage facilities.

The bulk and dimensional standards require minimum setbacks of 20 feet from the front, side, rear and side-corner property boundaries for all principal structures; setbacks for accessory structures differ slightly, requiring 20 foot setbacks from front and side-corner property boundaries and 5 foot setbacks from side and rear property boundaries. Additional setbacks of 20 feet are required from streams, rivers and unprotected lakes that do not serve as property boundaries, and from county roads classified as collector or major/minor arterials. The maximum allowable building height is 35 feet for all structures (exempting agricultural buildings), and the permitted lot coverage is 20%.

Proposed Zoning

The proposed zoning is *“A business district intended to provide for impact-mitigated retail sales and service functions along Montana state primary and secondary highways within the County. The uses serve the needs of the community and the general tourist/traveler while the unique performance standards mitigate the potential impacts of “strip” commercial development. The zone is specifically created with the intent of protecting the viewshed by providing a greenbelt, tiered building heights and enhanced signage and lighting standards.”* (Section 3.44 Flathead County Zoning Regulations).

Permitted uses in a B-2HG district would be:

1. Accessory Apartments
2. Art foundries/galleries
3. Bakery
4. Banks and financial institutions
5. Barber and beauty services
6. Bed and breakfast
7. Churches
8. Coffee stands
9. Delis
10. Food store (less than 5,000ft² gross floor area)
11. Food bank
12. General Retail Establishments (less than 5,000ft²)

13. Hotels/motels
14. Lodges; fraternal and social organizations
15. Media; newspapers, radio, tv, internet
16. Offices (professional and governmental)
17. Offices (medical)
18. Pack-n-ship
19. Parks and publicly-owned recreational facilities
20. Photographic studio
21. Print and Copy shops
22. Public transportation shelter stations
23. Public utility service installations (A minimum of five feet of landscaped area shall surround such building or structure.)
24. Quasi-public buildings
25. Restaurants
26. Tattoo parlor
27. Veterinary clinic

The following uses would be conditional use in a B-2HG district; an asterisk designates conditional uses that may be reviewed administratively:

1. Any building greater than 3,000ft²
2. Art foundries*
3. Auctions, indoor*
4. Automotive (new and used) and accessory sales*
5. Automobile Service Stations (gas stations)
6. Bars/tavern, liquor stores, casinos
7. Boat Sales, new and used*
8. Bus station
9. Car washes – auto detailing
10. Colleges, business schools, trade schools, music conservatories, dance schools.
11. Community center*
12. Convention center facilities
13. Condominiums, either residential or commercial
14. Day care centers*
15. Dwellings:*
 - a. Duplex
 - b. Townhouse
16. Electrical Distribution stations
17. Farm equipment sales
18. Funeral Homes and crematoriums
19. Greenhouses, nursery centers and landscaping materials*
20. HVAC/electrical/plumbing, sales and service*
21. Laundromats or dry cleaners
22. Lumber yard, building supply*
23. Manufactured home sales and storage*
24. Microbrewery
25. Mini-storage, RV Storage

26. Recreational facilities, high impact
27. Recreational facilities, low impact*
28. Recreational vehicle parks
29. Recycling drop-off stations
30. Rental service stores and yards*
31. Repair shops- appliances, clothing & electronics*
32. Small engine repair*
33. Structures containing multiple and/or mixed permitted uses*
34. Supermarkets (food store w/ 5,000ft² gross floor area or more)
35. Theater (non-drive in)*
36. Theater (drive in)

Minimum lot sizes and minimum lot widths in the B-2HG district vary depending upon availability of public sewer and water services. The district also includes greenbelt standards, varying setbacks if on a highway, tiered building heights, lighting standards and signage standards that are specific to the district.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

According to 76-2-203 (1) and 76-2-203(a), M.C.A. zoning regulations must be made in accordance with an adopted growth policy. The Flathead County Growth Policy is a very broad document that does not provide guidance that is specific to certain areas of the county. The goals and policies are applicable county wide. In many zoned areas of the county, neighborhood plans provide specific guidance on future land use usually in the form of a map, goals, and policies. The Highway 93 North zoning district was based upon the 1987 Master Plan which was superseded by the Growth Policy. Because the Growth Policy does not have guidance specific to the area and there is no neighborhood plan, the only guidance offered are policies applicable to the entire county.

The Implementation Plan found in the Flathead County Growth Policy Appendix C identifies how policies are to be implemented. The Implementation Plan separates the policies into categories by how they are to be implemented. The categories are:

Policy: A specific but non-regulatory statement that directly guides a community towards meeting an established goal regarding the promotion of public health, safety, welfare and efficiency in the process of community development. Growth-related policies are frequently directly implemented with regulatory mechanisms.

Action Item: A statement providing guidance for future planning efforts and requiring a follow-up action such as creation of a subsequent, more detailed plan or educational outreach effort. Implementation of an action item (i.e. creation of an additional plan) can result in detailed policies regarding a specific issue.

Neither: The *policy*, as stated in the Flathead County Growth Policy, does not provide specific guidance for growth or direction for future planning efforts.

Below is a list of policies that are listed in the implementation plan that may be implemented through the use of zoning that may be relevant to this proposal.

P.6.3 Provide ample commercial land designation to promote affordability.

Highway corridors provide opportunities for relatively inexpensive land in areas of high accessibility and visibility; however, the linear commercial development associated with highways often occurs in rural residential or agricultural areas and may be perceived as incompatible. Traffic, lighting, structures and other impacts of commercial development can vary significantly from residential and agricultural uses. The B-2HG district which is being requested in this application is intended to provide some mitigation of commercial development along highway corridors in areas surrounded by rural residential and agricultural lands uses.

P.6.4 Require traffic impact analysis for all major commercial projects on major highways and arterials.

The proposed zoning will achieve more review of traffic impacts along highways than other commercial zones by requiring a greater number of land uses to be reviewed as conditional of administrative conditional uses. The conditional use permit review process includes traffic and access as review criteria.

P.6.5 Conserve resources and minimize transportation demand by encouraging redevelopment and infill of existing commercial areas in the county.

The proposed zoning map amendment will create new commercial designation in an area of the county currently designated Suburban Agriculture. The proposed zoning map amendment is therefore not infill of existing commercial areas in Flathead County.

P.7.3 Encourage small-scale, impact-mitigated and compatible commercial developments in accessible, developing rural areas with good access and away from urban areas.

The B-2HG designation that is being requested by the applicant provides impact-mitigated commercial development along highway corridors in a developing rural area of the county.

P.7.4 Identify existing areas that are suitable for impact-mitigated commercial uses.

The requested B-2HG designation would provide the opportunity for impact-mitigated commercial uses along the highway corridor.

P.7.5 Encourage commercial development that is visually and functionally desirable.

The proposed zoning is generally the most mitigating of visual and functional impacts of commercial zoning available in rural Flathead County.

Finding #1- A land use plan more specific to the area than the county-wide Growth Policy does not exist because the Highway 93 North Zoning District was based upon guidance in the 1987 Master Plan and that document was superseded when the 2007 Growth Policy was adopted. However, the Flathead County

Growth Policy is compliant with Montana law and therefore existing zoning may be amended under the general guidance of the plan as an implementation of the plan.

Finding #2- The proposed map amendment is generally consistent with guidance provided by the majority of applicable policies within the Flathead County Growth Policy because the amendment would provide commercial land designation and encourage impact mitigated commercial uses.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject properties are located along a major highway corridor. According to the application, response times for emergency services are likely to be around 5 minutes. The properties are located in the West Valley Fire District, but according to the application an inter-local agreement would allow crews from the nearest fire station (Kalispell's north station is about 3.5 miles from the intersection of Highway 93 and Tronstad Lane) to respond to calls. Bulk and dimensional requirements included in the proposed district are intended to reduce the risk of fire spreading from building to building as well as allowing access to buildings by firefighters.

Finding #3- The proposed map amendment is designed to secure safety from fire and other dangers because the locations of the subject properties are on a major highway and near emergency services.

2. Promote public health, public safety, and general welfare;

The subject properties are located south of the intersection of Highway 93 and Church Drive. Kalispell Regional Medical Center is located approximately 4 miles to the south. Response times for emergency services are likely to be shorter than in other rural areas of the county. This area of the county has been undergoing a transition from rural residential and agricultural uses to suburban and urban uses. The area surrounding the subject properties are zoned residential, suburban agricultural or commercial. The proposed B-2HG has requirements that are intended to mitigate some of the potential impacts commercial uses could have on adjacent residential uses. These mitigation requirements include enhanced setback requirements from adjacent residential properties and enhanced lighting restrictions with improved clarity.

Finding #4- The proposed map amendment is designed to promote public health and safety and general welfare because response times to the subject properties are likely to be shorter than in other rural areas of the county, and the proposed zoning use requires mitigation intended to lessen impacts to adjacent properties.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Access to Highway 93 may be limited in this area by the Montana Department of Transportation (MDT). Given the size of the area and the availability of

existing approaches such as Tronstad Road, the development of a frontage road may be necessary for some of the parcels to be developable for commercial uses. The development of a frontage road would take a coordinated effort between landowners at their expense, or an effort by the Montana Department of Transportation.

Some of the subject properties abut the City of Kalispell's sewer line. New development would be required to follow DEQ rules that may require connection to the city services if costs are not prohibitive. If development is required to connect, they would likely need to be annexed into the city. New development could also be required to connect to city water in a similar process as the sewer system.

Converting residential uses to commercial uses may result in the subject properties no longer contributing students to the local schools. However, commercial development would still pay property taxes to the local school districts. Furthermore, commercial development does not generally increase demand on parkland.

Finding #5- The proposed map amendment is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because the subject properties are located on a major transportation route, could have access to city sewer and water, and will not have a negative impact on schools and parks.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

The subject properties can be accessed from a paved road. The uses in the proposed B-2HG district would not likely contribute to air pollution. Those that may have potentially deleterious impacts are to be reviewed for impacts as a conditional or administrative conditional use. Standards in the B-2HG district are in place to minimize light pollution. Bulk and dimensional requirements in the B-2HG are intended to prevent the overcrowding of buildings and to allow separation for access.

Finding #6- The proposed map amendment has given consideration to the provision of light and air because the properties could be accessed by paved roads, and standards are in place in the B-2HG zoning to minimize light pollution.

2. The effect on motorized and non-motorized transportation systems;

The subject properties are located on Highway 93, a major arterial roadway managed by MDT. MDT may restrict access to the subject properties requiring some of the properties to develop a frontage road system. Existing accesses and available land area could facilitate the development of a frontage road system. The B-2HG zoning use also has a provision requiring the dedication of easements for paths and trails along the highway corridor.

Finding #7- The proposed map amendment has given consideration to motorized and non-motorized transportation systems because the properties are located on Highway 93 and can accommodate frontage roads and the B-2HG zoning use has provisions for path and trail easements.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The cities of Whitefish and Kalispell have architecture review committees and other regulations in place to mitigate the impacts of commercial development along their highway corridors. Flathead County does not have a building department, therefore an architecture review committee and building site reviews are not possible. Furthermore the criteria for review of a conditional or administrative conditional use permit do not contain architectural review. The B-2HG zoning use utilizes standards for the site development similar to standards used by the cities to mitigate impacts of strip development. These additional criteria can be reviewed by the county through the conditional use and administrative conditional use permitting process, and through zoning enforcement.

The City of Kalispell's Growth Policy designates the subject properties as suburban residential, not commercial. Therefore the proposed map amendment is not compatible with the City of Kalispell's planning for the subject properties. If the proposed map amendment was approved and then the properties petitioned to annex into the city, the zoning would not be in compliance with the city's Growth Policy.

Finding #8- The proposed map amendment has generally given consideration to compatible urban growth in the vicinity of cities and towns because the B-2HG zoning use has some standards for site development similar in nature to mechanisms in use by the City of Kalispell along highway corridors.

Finding #9- The proposed map amendment would result in the zoning use on the subject properties being inconsistent with the City of Kalispell's Growth Policy because the city's Growth Policy designates the area as suburban residential.

4. The character of the district(s) and its peculiar suitability for particular uses;

The B-2HG zoning district is designed to mitigate some impacts of commercial strip development that might occur along major highway corridors. Highway corridors are generally attractive for businesses because of high accessibility and visibility, but are often times in undeveloped areas of the county. The B-2HG zoning district has additional standard that are intended to mitigate some impacts of commercial development when the commercial development is occurring in linear patterns sandwiched in between rural residential and agricultural uses in rural areas of the county. The area in proximity to the subject properties is transitioning from rural residential and agricultural uses to suburban and urban uses. The B-2HG

zoning use provides an increased level of mitigation than that of the standard B-2 designation.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The area surrounding the subject properties are in transition from rural residential and agricultural uses to suburban and urban uses. Linear commercial development can have negative impacts on the surrounding properties when the uses are not similar. The B-2HG zoning use is designed to mitigate some impacts of commercial strip development that might occur along major highway corridors. The requested zoning use is also designed to offset more impacts of commercial land uses adjacent to residential land uses than many other commercial zoning options in rural Flathead County. The potential does exist for the proposed commercial zoning to be directly adjacent to agricultural and residential land uses. However, the subject properties adjacent to Highway 93 and surrounded by a mix of commercial, agricultural and residential land uses are also exceedingly unlikely to be used and developed in the future with suburban agricultural developments. Therefore it is staff's conclusion that an impact-mitigated commercial land use is the most appropriate, realistic and inevitable use of the subject property.

Finding #10- The proposed map amendment has given consideration to the character of the district and its peculiar suitability for particular uses and the most appropriate use of land throughout the jurisdictional area because the B-2HG zoning use includes standards that are intended to mitigate impacts to adjoin properties that are not commercial uses, and overall the subject properties adjacent to Highway 93 and surrounded by mixed zoning, land uses and jurisdictions are unlikely to remain or be additionally developed as agricultural or residential land uses.

iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

When drafting the language for the B-2HG, the applicant did not have examples within the existing county regulations upon which to base the formation of the district. Instead, the applicant looked at existing regulations adopted by the local municipalities as examples and some aspects of the B-2HG district were adopted from those municipality's regulations. However, certain requirements of the City of Kalispell such as architectural review or specific landscaping requirements, are not able to be implemented under the regulatory framework of rural Flathead County. Furthermore, public will to administer and require detailed site-specific review of every development is significantly different in rural Flathead County than in urbanized, municipal areas of the county. This reality makes the proposed zoning "as nearly as possible" compatible with that of the City of Kalispell at this time.

Finding #11- The proposed map amendment is compatible with the zoning ordinances of nearby municipalities because the B-2HG was developed using

some aspects of the City of Kalispell ordinances as examples and includes many impact mitigating requirements that are possible and reasonable to require in rural Flathead County at this time.

V. SUMMARY OF FINDINGS

Finding #1- A land use plan more specific to the area than the county-wide Growth Policy does not exist because the Highway 93 North Zoning District was based upon guidance in the 1987 Master Plan and that document was superseded when the 2007 Growth Policy was adopted. However, the Flathead County Growth Policy is compliant with Montana law and therefore existing zoning may be amended under the general guidance of the plan as an implementation of the plan.

Finding #2- The proposed map amendment is generally consistent with guidance provided by the majority of applicable policies within the Flathead County Growth Policy because the amendment would provide commercial land designation and encourage impact mitigated commercial uses.

Finding #3- The proposed map amendment is designed to secure safety from fire and other dangers because the locations of the subject properties are on a major highway and near emergency services.

Finding #4- The proposed map amendment is designed to promote public health and safety and general welfare because response times to the subject properties are likely to be shorter than in other rural areas of the county, and the proposed zoning use requires mitigation intended to lessen impacts to adjacent properties.

Finding #5- The proposed map amendment is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because the subject properties are located on a major transportation route, could have access to city sewer and water, and will not have a negative impact on schools and parks.

Finding #6- The proposed map amendment has given consideration to the provision of light and air because the properties could be accessed by paved roads, and standards are in place in the B-2HG zoning to minimize light pollution.

Finding #7- The proposed map amendment has given consideration to motorized and non-motorized transportation systems because the properties are located on Highway 93 and can accommodate frontage roads and the B-2HG zoning use has provisions for path and trail easements.

Finding #8- The proposed map amendment has generally given consideration to compatible urban growth in the vicinity of cities and towns because the B-2HG zoning use has some standards for site development similar in nature to mechanisms in use by the City of Kalispell along highway corridors.

Finding #9- The proposed map amendment would result in the zoning use on the subject properties being inconsistent with the City of Kalispell's Growth Policy because the city's Growth Policy designates the area as suburban residential.

Finding #10- The proposed map amendment has given consideration to the character of the district and its peculiar suitability for particular uses and the most appropriate use of land throughout the jurisdictional area because the B-2HG zoning use includes standards

that are intended to mitigate impacts to adjoin properties that are not commercial uses, and overall the subject properties adjacent to Highway 93 and surrounded by mixed zoning, land uses and jurisdictions are unlikely to remain or be additionally developed as agricultural or residential land uses.

Finding #11- The proposed map amendment is compatible with the zoning ordinances of nearby municipalities because the B-2HG was developed using some aspects of the City of Kalispell ordinances as examples and includes many impact mitigating requirements that are possible and reasonable to require in rural Flathead County at this time.

VI. SUMMARY & CONCLUSION

Staff has identified two aspects of the proposed map amendment that require careful Planning Board and Commission consideration. The first issue is tying the basis of the map amendment to a land use plan when the applicable land use plan is the county-wide growth policy. The Growth Policy is a plan that is in general conformance with Montana law, and therefore can be the basis for zoning. However, land use plans such as neighborhood plans usually provide more specific guidance to what areas within the planning boundary are appropriate for what use. In this situation, there is not a land use plan more detailed than the Growth Policy to provide guidance that the area is or is not appropriate for commercial use. Given the broad land use differences between SAG-10 and B-2HG, specific guidance for decision makers as to the appropriateness to the map amendment would be extremely beneficially. However, the situation as it exists has been outlined in this staff report, reviewed under the Growth Policy in conformance with Montana law, and presented for Planning Board and Commission consideration.

Secondly, item ii.(3) of the review criteria states “*Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities).*” This criterion is relatively new, having been adopted by the 2009 legislature. What the legislature exactly meant by this criteria has not been established through any court precedent known by staff. The issue is; if the zone change is approved and the properties are ever annexed, the zoning use would not be compatible with the City of Kalispell’s plan for growth for that area. Does this criteria suggest that zoning amendments in the county specifically need to be based on plans in the city or face denial? Staff does not believe it does, but does believe that fact must be considered by the Planning Board and Commission when adopting findings of fact.

It is staff’s opinion at this time that the proposal is generally based upon the guidance provided by the Growth Policy and meets most of the statutory criteria for zone change review and the draft findings of fact reflect this opinion. Staff has also drafted a finding of fact for the Board’s consideration related to the possibility for incompatibility with the City of Kalispell’s growth policy.

Planner: DH 2010 Original
BJ 2011 Revisions

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